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UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of Eric C. Steindorf

Examiner: Nihir B. Patel

Serial No: 10/743,260

Art Unit: 3743

Filed: December 22, 2003

Deposit Acct. No: 04-1403

Confirmation No: 4463

Customer No: 22827

Title: FACE MASK HAVING BAFFLE LAYER FOR IMPROVED FLUID RESISTANCE

Date of Deposit February 6, 2007

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
Re: Appeal to the Board of Patent Appeals and Interferences

In re Application of Eric C. Steindorf ) Examiner: Nihir B. Patel  
Serial No: 10/743,260 ) Art Unit: 3743  
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1. ☐ **NOTICE OF APPEAL:** Pursuant to 37 CFR 41.31, Applicant hereby appeals to the Board of Appeals from the decision dated 10/12/2006 of the Examiner finally rejecting claims 1-5, 10, 12, 13, 15, 26, 20 and 25.
2. ☒ **BRIEF** on appeal in this application pursuant to 37 CFR 41.37 is transmitted herewith (1 copy)
3. ☐ An **ORAL HEARING** is respectfully requested under 37 CFR 41.47 (due within two months after Examiner's Answer).
4. ☐ Reply Brief under 37 CFR 41.41(b) is transmitted herewith (1 copy).
5. ☐ "Small entity" verified statement filed: ☐ herewith ☐ previously.

6. **FEE CALCULATION:**

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If box 1 above is X'd enter \$500.00	\$
If box 2 above is X'd enter \$500.00	\$ 500.00
If box 3 above is X'd enter \$1,000.00	\$
If box 4 above is X-d enter -0- (no fee)	\$

Petition is hereby made to extend the original due date of \_\_\_\_\_ to cover the date of this paper and any enclosure for which the requisite fee is (1 month \$120); (2 months \$450); (3 months \$1,020); (4 months \$1,590), (5 months \$2,160)

Subtotal \$

Less any previous extension fee paid since above original due date. - \$

Subtotal \$ 500.00

If "small entity" box 5 above is X'd, enter one-half (1/2 of subtotal and subtract)

TOTAL FEE \$ 500.00

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- ☐ Charge fee to our Deposit Account/Order Nos. in the heading hereof (for which purpose one additional copy of this sheet is attached)
- ☒ Charge to credit card (attach Credit Card Payment Form - PTO 2038)
- ☐ Fee NOT required since paid in prior appeal in which the Board of Appeals did not render a decision on the merits.

The Commissioner is hereby authorized to charge any fee specifically authorized hereafter, or any fees in addition to the fee(s) filed, or asserted to be filed, or which should have been filed herewith or concerning any paper filed hereafter, and which may be required under Rules 16-18 (deficiency only) now or hereafter relative to this application and the resulting official document under Rule 20, or credit any overpayment, to our Account No. show in the heading hereof for which purpose a duplicate copy of this sheet is attached. This statement does not authorize charge of the issue fee in this case.

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Date: 02/06/07

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D&M REFERENCE: KCX-771 (19263)

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**APPLICANT'S APPEAL BRIEF**

MAIL STOP APPEAL BRIEF – PATENTS

Commissioner of Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Sir:

In accordance with 37 CFR § 41.37, Applicant hereby submits his opening appeal brief to the Examiner's Final Action mailed on October 12, 2006, for the caption application.

1. REAL PARTY IN INTEREST:

The real party in interest is Kimberly-Clark Worldwide, Inc., the assignee of the Applicant's entire right title and interest.

2. RELATED APPEALS AND INTERFERENCES:

None.

3. STATUS OF CLAIMS:

Applicant appeals the rejection of all of the non-allowed pending claims 1-5, 10, 12, 13, 15, 16, 20 and 25, which are under final rejection mailed on October 12, 2006.

Claims 6-9, 11, 14, 17-19, 21-24, 26 and 27 are withdrawn from consideration.

4. STATUS OF AMENDMENTS:

No amendment has been made after the final rejections mailed on October 12, 2006.

5. SUMMARY OF CLAIMED SUBJECT MATTER:

The independent claims on appeal are claims 1 and 12.

Claim 1 is drawn to a face mask, which is shown in Figs. 1 and 2 and designated by the numeral 10 as explained at page 8, lines 22-23 of the subject application. The face mask 10 comprises a body portion 12 that is configured to be placed over a mouth and at least part of a nose of a user in order to isolate and the at least part of the nose of the user from the environment such that the air of respiration is drawn through the

body portion. These aspects of the claimed face mask are shown in Fig. 1 and 2 and described at page 8, lines 23-26 and 32-33 of the present specification. The body portion 12 of the face mask 10 has a baffle layer 16 having an outer and inner surface with a plurality of projections 22 extending from at least one of the outer and inner surfaces as shown in Fig. 3 for example and described at lines 14-18 of page 9 of the subject application. As described at page 9, lines 24-25 and as shown in Figs. 7 and 9 – 12 for example, the baffle layer 16 is a separate layer in the body portion 12. As described at page 10, lines 22-23, page 11, lines 2-3 and shown in Figs. 8 and 11 for example, the projections 22 define a plurality of channels of 26 on the baffle layer 16. As described at page 11, lines 5-30, the channels 26 are configured for channeling fluid to different locations on the baffle layer 16. As described at page 10, lines 5-21 and shown in Figs. 3 and 9 for example, the baffle layer 16 is configured to aid in absorbing energy associated with fluid striking the body portion 12 and to prevent fluid strike through.

Claim 12 also is drawn to a face mask 10, which is shown in Figs. 1 and 2 and described at page 8, lines 22-23 of the subject application. The face mask 10 comprises a body portion 12 that is configured to be placed over a mouth and at least part of a nose of a user in order to isolate and the at least part of the nose of the user from the environment such that the air of respiration is drawn through the body portion. These aspects of the claimed face mask are shown in Fig. 1 and 2 and described at page 8, lines 23-26 and 32-33 of the present specification. Claim 12 requires the body portion 12 to have at least one layer 16 having an outer surface 18 facing away from the user when worn and an inner surface 20 facing towards the user when worn as shown

in Figs. 7, 8, 9, and 10. The at least one layer 16 having a plurality of projections 22 extending therefrom as shown in Figs. 3 – 5 and 7 - 12 for example and described at lines 14-18 of page 9 of the subject application. As described at page 10, lines 5-21 and shown in Figs. 3 and 9 for example, the baffle layer 16 is configured to aid in absorbing energy associated with fluid striking the body portion 12 and to prevent fluid strike through. As described at page 10, lines 22-23, page 11, lines 2-3 and shown in Figs. 8 and 11 for example, the projections 22 define a plurality of channels of 26 on the baffle layer 16. As described at page 11, lines 5-30, the channels 26 are configured for channeling fluid to different locations on the baffle layer 16.

6. GROUND OF REJECTION TO BE REVIEWED ON APPEAL:

The final rejections of claims 1-3, 5, 10, 12, 13, 20 and 25 as allegedly anticipated under 35 U.S.C. § 102(b) by Baumann et al U.S. 6,354,296 (hereafter Baumann).

The final rejections of claims 4, 15 and 16 under 35 U.S.C. § 103(a) as allegedly lacking nonobviousness over Baumann in view of Niemeyer U.S. 4,951,664 (hereafter Niemeyer).

7. ARGUMENT:

A. Claims 1-3, 5, 10, 12, 13, 20 and 25

For the reasons explained below, applicant respectfully traverses the rejection of claims 1-3, 5, 10, 12, 13, 20 and 25 under 35 U.S.C. 102(b) as being anticipated by Baumann et al.

Each of claims 1-5, 10, 12, 13, 15, 16, 20 and 25 requires (emphasis added):

**a body portion configured to be placed over a mouth and at least part of a nose of a user** in order to isolate the mouth and the at least part of the nose of the user from the environment such that the air of respiration is drawn through the body portion,

See page 8, lines 23-26 of applicant's specification for example.

Each of claims 1-5 and 10 requires (emphasis added):

**the body portion having a baffle layer** having an outer and an inner surface **with a plurality of projections** extending from at least one of the outer and inner surfaces that define a plurality of channels on the baffle layer configured for channeling fluid to different locations on the baffle layer

Similarly, each of claims 12, 13, 15, 16, 20 and 25 requires (emphasis added):

**the body portion having at least one layer, \* \* \*** the layer **having a plurality of projections** extending therefrom, **\* \* \*** wherein the projections define a plurality of channels on the layer configured for channeling fluid to different locations on the layer

See page 9, lines 14-18, page 10, lines 22-23, page 11, lines 2-3, and Figs. 3-5 and 7-12 of applicant's specification for example.

Baumann et al's mask 10 cannot satisfy these limitations of claims 1-5, 10, 12, 13, 15, 16, 20 and 25 because Baumann et al's resilient member 12 with the pillowed lower density regions 44 (arguably projections) is not "configured to be placed **over a mouth and at least part of a nose of a user.**" Instead, Baumann et al's resilient member 12 is configured to be positioned between the user's eyes and nose. As explained at Baumann et al column 3, lines 36 – 41 (emphasis added):

When the resilient member 12 is positioned against a wearer's face, such as **between the wearer's nose and eyes, as shown in Fig. 3**, moisture from exhaled

breath is prevented from exiting the mask in a manner that would cause fogging of the wearer's eyewear, e.g., eyeglasses, goggles, and face shields.

The Baumann et al patent is entitled, Anti-Fog Mask. Not surprisingly, the overriding purpose of the Baumann et al mask 10 is to prevent fogging of the wearer's eyewear, which is never located near the wearer's mouth. Thus, the portion of the Baumann et al mask 10 that is configured to cover the mouth of the wearer is not provided with the resilient member 12 and its air pillowed lower density regions 44 (arguably projections).

Lines 1-12 of paragraph 1 on page 2 of the final Action state (emphasis in original):

Applicant's arguments filed on January 17<sup>th</sup>, 2006 have been fully considered but they are not persuasive. The applicant argues that the resilient member with the pillowed lower density regions in Baumann's is not configured to be placed over a mouth and at least part of a nose of a user. The examiner disagrees. Baumann clearly states that "When the resilient member is positioned against a wearer's face, **such as** between the wearer nose and eyes". The phrase "such as" indicates that its just one of may locations where the resilient member can be located on a wearer's face such as over a mouth and part of a nose. Baumann used the location between the wearer's nose and eyes as an example. As stated in the summary of the invention and column 4, lines 25-30 mentions the wearer's face not "between the wearer's nose and eyes", and the location "mouth and at least part of the nose" is considered a wearer's face. Therefore claims 1-3, 5, 10, 12, 13, 20 and 25 are still rejected under 35 U.S.C. 102(b) as being anticipated by Baumann et al. as stated in the previous office action dating April 4<sup>th</sup>, 2006.

The insistence of the Final Action that the mere mention of "the wearer's face" must be interpreted to include "the mouth and at least part of the nose" ignores what Baumann et al fairly suggests to the person of ordinary skill. First, the absurdity of this



contention of the Final Action reveals itself by asking the following question. Does the Final Action contend that “the wearer’s face” should be interpreted to mean the wearer’s forehead, which also is considered part of the wearer’s face? Secondly, Baumann et al column 3, lines 38–40 identifies the focus of Baumann et al on the “moisture from exhaled breath” that is to be “prevented from exiting the mask in a manner that would cause fogging of the wearer’s eye wear”. One’s breath is exhaled from the nose rather than the mouth, especially exhaled breath that might fog the wearer’s eye wear, which is proximate the nose, not the mouth. Accordingly, the interpretation of the Final Action contradicts the plainly expressed teaching of Baumann et al on both of these points.

Additionally, the Final Action’s reference to Baumann et al column 4, lines 25-30 is noted, but is taken out of context in order to conform to the interpretation asserted by the Final Action. Baumann et al lines 25-30 is a text that specifically says that it is “referring to FIGS. 4a and 4b,” which takes the reader to the description of FIGS. 4a and 4b at Baumann et al column 2, lines 40-44. There, Baumann et al specifically states that Fig. 4a is a cross-section view taken along the line 1-1’ of the mask of FIG. 1. Moreover, the description of Baumann et al FIG. 3 at Baumann et al column 2, lines 37-39 specifically states that “FIG. 3 is a perspective view of the mask of FIGS. 1 and 2 positioned on a wearer’s face, which is outlined in phantom.” One need only look at Baumann et al FIG. 3 in relation to Baumann et al FIG. 1 to realize that the portion of the wearer’s face where the resilient member 12 is available for contact is that portion between the wearer’s nose and eyes, and no other. Thus, the Final Action’s insistence on interpreting Baumann et al in a manner that contradicts the express descriptions of Baumann et al unfairly and improperly attributes to Baumann et al, disclosure that is not

present within a fair reading of what Baumann et al suggests to the person of ordinary skill.

Baumann et al describes FIG. 4b as being the mask of FIG. 4a. Thus, both Baumann et al FIGS. 4a and 4b are referred to FIG. 1, which in turn is referred to Baumann et al FIG. 3, which clearly shows that positioning “on a wearer’s face” means between the wearer’s nose and eyes. For Baumann et al’s description of FIG. 3 also contains the phrase “on a wearer’s face” and shows exactly what the phrase “on a wearer’s face” means in the Baumann et al context by depicting the wearer’s face “outlined in phantom.” What is “outlined in phantom” in Baumann et al FIG. 3 shows that as concerns where Baumann et al’s resilient member 12 is configured to be placed, the “wearer’s face” is between the wearer’s nose and eyes in the “wearer’s face” according to Baumann et al.

Moreover, the portion of the description of Baumann et al in the summary of the invention is just that, a summary, which uses shorthand phrases that do not get into the specifics of the teaching to the person of ordinary skill. The Final Office Action’s contention that Baumann et al teaches the pillowed lower density regions to be placed between the wearer’s mouth and at least a part of the nose is derived exclusively from applicant’s specification, not from any suggestion or disclosure in Baumann et al based upon a reasonable reading of Baumann et al.

Applicant therefore respectfully submits that claims 1-3, 5, 10, 12, 13, 20 and 25 are patentable under 35 U.S.C. 102(b) over Baumann et al.

#### B. Claims 4, 15 and 16

For the reasons explained below, applicant respectfully traverses the rejection of

claims 4, 15 and 16 under 35 U.S.C. 103(a) as being unpatentable over Baumann et al in view of Niemeyer.

Niemeyer fails to correct the deficiency that is noted above in Baumann et al. Moreover, Niemeyer fails to disclose any baffle layer with projections as required by claims 4, 15 and 16. Thus, it is not possible for Niemeyer to be read to disclose or suggest a layer stiffer than a baffle layer with projections as required by claims 4, 15 and 16. Nor does the Final Office Action identify any such stiffer layer in Niemeyer.

Applicant therefore respectfully submits that claims 4, 15 and 16 are patentable under 35 U.S.C. 103(a) over Baumann et al in view of Niemeyer.

8. CLAIMS APPENDIX:

1. (Previously presented) A face mask, comprising:

a body portion configured to be placed over a mouth and at least part of a nose of a user in order to isolate the mouth and the at least part of the nose of the user from the environment such that the air of respiration is drawn through the body portion, the body portion having a baffle layer having an outer and an inner surface with a plurality of projections extending from at least one of the outer and inner surfaces that define a plurality of channels on the baffle layer configured for channeling fluid to different locations on the baffle layer, the baffle layer configured to aid in absorbing energy associated with fluid striking the body portion and to prevent fluid strike through.

2. (Previously presented) The face mask of claim 1, wherein the channels are interconnected and are defined by the projections and the outer surface of the baffle layer, the channels having an orientation such that the fluid is directed laterally away

from the point of impact of the fluid through the channels.

3. (Original) The face mask of claim 1, wherein:

the body portion has a first layer contacting the projections of the baffle layer;

and

the body portion has a third layer contacting the inner surface of the baffle layer.

4. (Original) The face mask of claim 3, wherein the first layer is stiffer than the baffle layer.

5. (Original) The face mask of claim 1, wherein the projections are circular pillows.

6. (Withdrawn) The face mask of claim 1, wherein the projections are hexagonal in shape.

7. (Withdrawn) The face mask of claim 1, wherein the baffle layer is a film, and wherein each of the projections defines a hole therethrough.

8. (Withdrawn) The face mask of claim 1, wherein the projections are ridges that define a plurality of valleys such that the outer surface of the baffle layer has a corrugated shape.

9. (Withdrawn) The face mask of claim 1, wherein the plurality of projections each defines a cavity on the inner surface of the baffle layer.

10. (Original) The face mask of claim 1, wherein the plurality of projections extend from the outer surface of the baffle layer.

11. (Withdrawn) The face mask of claim 1, wherein the baffle layer is made from a web formed into a three-dimensional shape.

12. (Previously presented) A face mask comprising:

a body portion configured to be placed over a mouth and at least part of a nose of a user in order to isolate the mouth and the at least part of the nose of the user from the environment such that the air of respiration is drawn through the body portion, the body portion having at least one layer, the layer having an outer surface facing away from the user when worn and an inner surface facing towards the user when worn, the layer having a plurality of projections extending therefrom, the projections aiding in absorbing energy associated with fluid striking the body portion, wherein the projections define a plurality of channels on the layer configured for channeling fluid to different locations on the layer.

13. (Original) The face mask of claim 12, wherein the body portion has an inner facing layer contacting the skin of the user when worn, an outer facing layer, and a filtration media layer disposed between the inner facing layer and the outer facing layer, wherein the layer with the plurality of projections is any one of the inner facing layer, outer facing layer, and filtration media layer.

14. (Withdrawn) The face mask of claim 13, wherein the plurality of projections extend from an outer surface of the filtration media layer.

15. (Original) The face mask of claim 13, wherein the outer facing layer is stiffer than the filtration media layer.

16. (Original) The face mask of claim 12, wherein the body portion has an additional layer that is the layer farthest from the user when worn and adjacent to the layer having the projections, the additional layer stiffer than the layer having the projections.

17. (Withdrawn) The face mask of claim 12, wherein the body has a plurality of

layers, and wherein the projections define an interior space between the layer having the projections and an adjacent layer.

18. (Withdrawn) The face mask of claim 12, wherein the projections are located on the outer surface of the layer and wherein each of the projections defines a cavity on the inner surface of the layer, and wherein the body portion has a plurality of layers, and wherein the projections define an interior space between the layer having the projections and an outer adjacent layer, and wherein the cavities on the inner surface of the layer minimize contact between the inner surface of the layer and an inner adjacent layer.

19. (Withdrawn) The face mask of claim 12, wherein the projections and the outer surface of the layer define a plurality of interconnected channels for redirecting the flow of fluid that strikes the body portion such that the fluid is directed across the outer surface of the layer having the projections away from the point of initial contact of the fluid with the layer.

20. (Original) The face mask of claim 12, wherein the projections are circular pillows.

21. (Withdrawn) The face mask of claim 12, wherein the projections are hexagonal in shape.

22. (Withdrawn) The face mask of claim 12, wherein the layer having the projections is a film, and wherein each of the projections defines a hole therethrough.

23. (Withdrawn) The face mask of claim 12, wherein the projections are ridges that define a plurality of grooves such that the outer surface of the layer having the projections has a corrugated shape.

24. (Withdrawn) The face mask of claim 12; wherein the plurality of projections each defines a cavity on the opposite surface of the layer from which the plurality of projections extend.

25. (Original) The face mask of claim 12, wherein the plurality of projections extend from the outer surface of the layer having the projections.

26. (Withdrawn) The face mask of claim 12, wherein the body portion is made from a web formed into a three-dimensional shape.

27. (Withdrawn) A face mask comprising:

a body portion configured to be placed over a mouth and at least part of a nose of a user in order to isolate the mouth and the at least part of the nose of the user from the environment such that the air of respiration is drawn through the body portion, the body portion having an inner facing layer, an outer facing layer, and a baffle layer disposed between the inner facing layer and the outer facing layer, the baffle layer having an inner surface and an outer surface wherein the outer surface of the baffle layer has a plurality of projections extending therefrom, the projections aiding in absorbing energy associated with fluid striking the body portion, wherein the projections and the outer surface of the baffle layer define a plurality of interconnected channels for redirecting the flow of fluid that strikes the body portion such that the fluid is directed across the outer surface of the baffle layer away from the point of initial contact of the fluid with the baffle layer.

9. Evidence Appendix:

N/A

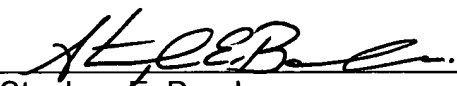
10: Related Proceedings Appendix:

N/A

Respectfully submitted,

DORITY & MANNING, P.A.

DATED: 02/06/07

  
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